

## REMARKS/ARGUMENTS

In the Office Action mailed September 27, 2007, claims 1-10 were rejected. In response, Applicants hereby request reconsideration of the application in view of the amended claims and the below-provided remarks. Claims 11-14 are added. Claim 7 is canceled.

For reference, claim 3 is amended to recite a reference performance curve. Claim 4 is amended to recite estimating code block size coding gains. New claims 11-14 ultimately depend on independent claims 4, 8, 9, and 10, and are added to recite limitations related to updating a network storage protocol while providing continued operations between the storage application and the network interface driver. These amendments are supported, for example, by the subject matter described at page 12, line 18, to page 13, line 2, of the originally filed specification.

### Claim Rejections under 35 U.S.C. 112, second paragraph

Claim 3 is rejected under 35 U.S.C. 112, second paragraph. Specifically, the Office Action rejects claim 3 as being indefinite with regard to the limitation “reference values.” Applicants appreciate the Examiner’s observation and submit claim 3 is amended to recite a “reference performance curve.” Accordingly, Applicants respectfully request that the rejection of claim 3 under 35 U.S.C. 112, second paragraph, be withdrawn.

### Claim Rejections under 35 U.S.C. 103

Claims 1, 2, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg et al. (U.S. Pat. No. 6,788,657, hereinafter Freiberg) in view of Higuchi et al. (U.S. Pat. App. No. 2002/0012383, hereinafter Higuchi). Additionally, claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg in view of Setty et al. (U.S. Pat. App. No. 2003/0103469, hereinafter Setty). However, Applicants respectfully submit that these claims are patentable over Freiberg, Higuchi, and Setty for the reasons provided below.

### Independent Claims 1, 8, 9, and 10

Independent claim 1 recites “a method of resource optimization comprising a step of balancing said current individual transmission powers with respect to an estimate, for a given service, of a difference between the specific predetermined error rate requirement and a measured current error rate” (emphasis added). Claims 8, 9, and 10 recite similar limitations.

Applicants submit that neither Freiberg nor Higuchi teaches at least the aforementioned limitation of independent claim 1. The Office Action concedes that the primary citation to Freiberg does not teach a step of balancing said current individual transmission powers with respect to an estimate, for a given service, of a difference between the specific predetermined error rate requirement and a measured current error rate. Office Action, page 7. Nonetheless, the Office Action rejects independent claim 1, contending that the secondary citation to Higuchi purportedly provides this necessary teaching. Office Action, page 7. This contention is respectfully traversed.

Higuchi relates to controlling power according to a difference between a detected reception error rate and a target reception error rate. Higuchi, page 7, claim 6, lines 3-8. Controlling power according to a difference between a detected reception error rate and a target reception error rate is not the same as balancing a current individual transmission powers with respect to an estimate, for a given service, of a difference between the specific predetermined error rate requirement and a measured current error rate because Higuchi is concerned with controlling power based on the actual measured difference between a detected reception error rate and a target reception error rate, and not an estimate of the difference. With reference to the specification of the present application, one example of an “estimate” is an estimate from an expected performance curve, although other estimates may be used. An estimate is different than a measurement, in many ways. For example, an estimate may be based on a lookup table and may use little or no processing time compared to an actual measurement. In some cases, an estimate is implemented to save time and to relatively reduce a computational load that would be involved with an actual measurement. Hence, Higuchi does not appear to provide a teaching that remedies the aforementioned, conceded deficiency in the primary citation to Freiberg. In fact, Higuchi appears to be silent in regards to controlling power according to an estimate of the difference between a detected reception error rate and a target

reception error rate because Higuchi merely describes using an actual measurement. Accordingly, favorable reconsideration and withdrawal of the rejections of claims 1, 8, 9, and 10 under 35 U.S.C. § 103(a) are respectfully requested.

#### Independent Claim 4

Independent claim 4, as amended, recites “a method of resource optimization including a step of balancing said current individual transmission powers with respect to the predetermined sizes of said transport data blocks, wherein said step of balancing said current individual transmission powers includes a step of estimating code block size coding gains related to the transport data blocks for deriving individual quality factors matching said specific predetermined error rate requirements” (emphasis added). Applicants submit that neither Freiberg nor Setty teaches at least the aforementioned feature of independent claim 4.

In regard to the first indicated limitation of “a method of resource optimization including a step of balancing said current individual transmission powers with respect to the predetermined sizes of said transport data blocks,” the Office Action concedes that the primary citation to Freiberg does not teach a step of balancing said current individual transmission powers with respect to the predetermined sizes of said transport data blocks. Office Action, pages 11-12. Nonetheless, the Office Action rejects independent claim 4, contending that the secondary citation to Setty provides this necessary teaching. Office Action, pages 11-12. This contention is respectfully traversed. Setty relates to adjusting the transmission power of the system according to a relationship between the size of a midamble signal and the size of a data signal with a transmission burst. Setty, page 1, paragraph 11. In particular, Setty relates to a slope (S), where the slope (S) is the relationship between the size of the Midamble signal (M) and the size of data signal (D), where (S) equals (D-M) divided by (D). Setty, page 1, paragraph 7. Adjusting the transmission power of the system according to a slope representing the relationship between the size of the data and the size of the midamble with a transmission burst is not the same as balancing said current individual transmission powers with respect to predetermined sizes of said transport data blocks because Setty is concerned with

measuring variable relationships between data and midamble in order to adjust power, and not predetermined sizes of blocks.

In regard to the second indicated limitation of “a step of estimating code block size coding gains related to the transport data blocks for deriving individual quality factors matching said specific predetermined error rate requirements,” Freiberg relates to a coding gain used as an input to a rate matching step, the output of which is the energy per symbol over the spectral noise density. Freiberg, col. 8, lines 22-26. Using a coding gain as an input to a rate matching step is not the same as estimating code block size coding gains related to the transport data blocks for deriving individual quality factors matching said specific predetermined error rate requirements because inputting a coding gain into a rate matching step does not involve estimating. In fact, Freiberg appears to be silent in regards to estimating code block size coding gains related to the transport data blocks for deriving individual quality factors matching said specific predetermined error rate requirements. Thus, Freiberg and Setty do not teach the limitations of claim 4. Accordingly, favorable reconsideration and withdrawal of the rejection of claim 4 under 35 U.S.C. § 103(a) is respectfully requested.

#### Dependent Claims 2, 3, 5, and 6

Claims 2, 3, 5, and 6 depend from and incorporate all of the limitations of the corresponding independent claims 1 and 4. Applicants respectfully assert claims 2, 3, 5, and 6 are allowable based on allowable base claims. Additionally, each of claims 2, 3, 5, and 6 may be allowable for further reasons.

## CONCLUSION

Applicants respectfully request reconsideration of the claims in view of the amendments and remarks made herein. A notice of allowance is earnestly solicited.

Petition is hereby made under 37 CFR 1.136(a) to extend the time for response to the Office Action of 12/27/07 to and through 1/28/08, comprising an extension of the shortened statutory period of one month.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-3444** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-3444** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

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